IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9338 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITTHALBHAI JESANGBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9338 of 1999

MR RA PATEL for Petitioner No. 1

MR HC PATEL ASSTT GOVERNMENT PLEADER for Respondent No. 1

RULE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/12/2002

ORAL JUDGEMENT

#. Heard learned advocate Mr.R.A.Patel on behalf of the petitioner and learned AGP Mr.H.C.Patel appearing on

behalf of the respondent - State Authorities. As per the endorsement of the Board, the respondent No.2 was not served. Learned advocate Mr.R.A.Patel requests this Court to permit the petitioner to delete the respondent No.2. Permission as sought for is granted. Necessary amendment to be carried out forthwith.

#. The brief facts giving rise to the present petition are as under :-

The agricultural land bearing Survey Nos.1424, 1449 and 1450 admeasuring 3 : 31, 1 : 19 and 1 : 00 Acre - Gunthas respectively of village Vatva, Taluka Daskroi owned and occupied by Himansu Jethabhai from whom the petitioner had purchased by registered sale deed dated 11th September, 1975 for the agricultural purpose. The mutation entry had also been certified in the village Form No.6 being entry No.7874 on 30th November, 1975. The petitioner is paying the agricultural assessment since then. It is case of the petitioner that the said entry had never been challenged by any authority at any stage and time. It is stated that all of sudden, the Mamlatdar, Daskroi issued a notice under Section 84[C] of the Tenancy Act asking the petitioner as to why the purchase should not be declared against the provisions of the Tenancy Act. The Mamlatdar after holding a summary inquiry, held that the petitioner is not an agriculturist and therefore, cannot purchase the said land as barred under Section 63 of the Act. The Mamlatdar therefore declared that the land vested in the Government by order dated 8th May, 1990 in Tenancy Case No.65 of 1990. Thereafter, the petitioner filed an appeal before the Deputy Collector, who by his order dated 31st May, 1994 in Tenancy Appeal No. 11 / 94, who, dismissed the said appeal after hearing both the parties. The said matter was carried to the Gujarat Revenue Tribunal being Tenancy B.A. No.797 / 1994, which, after hearing was rejected by the Tribunal by its order dated 26th February, 1999. Against the said order of the GRT, the petitioner had preferred Review Application No.20 / 99. However, according to the petitioner, the tribunal without proper appreciation of the evidence on record rejected the review application by order dated 8th October, 1999 and hence this petition.

#. Learned advocate Mr.R.A.Patel appearing on behalf of the petitioner has submitted that proceeding under Section 84[C] of the Act has been initiated by the Mamlatdar in respect of the transaction dated 19th September, 1975 but prior to that, the petitioner was holding the land in his own name in respect of

Bahermapura Survey No.140 paiki which was purchased on 17th January, 1966, so also the other lands situate at village Timba Survey Nos.384, 386 and 388 which were purchased by the petitioner being Agriculturist on 25th February, 1966. Thereafter, the lands situate in Vatva village, Survey Nos.1252/1/2 and 1256/2 which is the agricultural land, was purchased by the petitioner on 19th August, 1975. He submitted that all these three transactions were prior to the transaction in question but as such, no such proceeding has been initiated by any of such Revenue Authorities against the petitioner and none of the transaction has been set aside nor any such entry has been set aside by any of the Revenue Authority. It is also stated that the petitioner is having possession of all the lands in respect of the lands prior to purchase of the land in question. He also submitted that the land was purchased on 19th September, 1975 and at the relevant time, the petitioner was agriculturist and it was legal and valid transaction entered into by the petitioner under the law and as such, Section 63 has not been violated. He also submitted that the lower authorities have committed gross error while coming to the conclusion that the petitioner was not an agriculturist inasmuch as the petitioner was not holding the land within periphery of 8 km as per Section 2[6] of the Bombay Tenancy Act when the last transaction dated 19th September, 1975 was entered into by the petitioner. Learned advocate Mr.Patel further submitted that in view of the amendment made in Section 2[6] of the Tenancy Act, now the entire proceedings including the order passed by the lower authorities require to be abated as per the amended provisions of the Tenancy Act. Learned advocate Mr.Patel has also placed on reliance on one decision of this Court in case of Meruben D/o Sorbji Pestanji Bhatporiya & w/o Late Peshi Morena & Anr. V. Additional Special Secretary, Revenue Department & Others reported 2002 [1] GLR 640.

#. Learned AGP Mr.H.C.Patel on behalf of the respondents - State Authorities has submitted that the lower authorities have rightly initiated the proceedings under Section 84[C] of the Tenancy Act. It is submitted that at the relevant time in respect of transaction dated 19th September, 1975, the lower authority has found on the basis of the record that in respect of earlier transaction entered into by the petitioner for the respective lands, the petitioner was not an agriculturist and therefore, there is clear violation of Section 63 of the Tenancy Act. He also submitted that detailed reasons are given by the authority and the authority has not committed any error while passing such orders and

therefore, no interference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution of India. However, he submitted that on account of the amendments made in sub Section 2[6] of the Tenancy Act, whatever legal effect is available to the petitioner, let the petitioner may get such benefits as per the amended Act in accordance with law.

#. In view of submissions made by learned advocates for the parties and looking to the record before this Court in this matter, it transpires that initially proceedings under Section 84[C] of the Act has been initiated by the Mamlatdar against the petitioner in respect of the transaction dated 19th September, 1975 for the land situate at Vatva village but before that, there were three transactions referred above were already entered into in respect of lands situate at village Baherampura, Timba and Vatva and all said lands are also agricultural lands, purchased by the petitioner being agriculturist. However, considering the observations made by the lower authority that the petitioner is not having agricultural land nor in possession of such lands situate within periphery of 8 kms. as required under Section 2[6] of the Tenancy Act. But now considering the amended provisions of the law, at this juncture, it requires to be noted that said Section has been amended under the Bombay Tenancy and Agricultural Lands [Gujarat Amendment] Act, 1995, wherein Section 2, for the words "shall be deleted" occurring at two places, the words "shall be and shall be deemed always to have been deleted" shall be substituted. Thereafter, further amendment has been made in Bombay Tenancy and Agriculture Lands [Gujarat Amendment] Act, 1995, by notification dated 16th March, 2001. The object of the Amendment in the year 2001 under the Tenancy Act are as under :-

"Statement of objects and reasons"

" The restrictions to hold the agricultural land by distance of more than 5 miles i.e. 8 kilometers or the entire area of land shall form one compact block and the residential requirement for personal supervision for cultivation of land, have been removed by the Bombay Tenancy and Agricultural Lands [Gujarat Amendment] Act, 1995.

The State Government has received several representations from farmers for withdrawal of the cases pending before any Court, Tribunal or other authority on the commencement of the said amending Act as they are facing hardships,

particularly when the Government has already removed the aforesaid restrictions. IN order to remove such hardships, it was considered necessary to amend the said amending Act so as to remove the aforesaid restriction with retrospective effect and to provide that the cases pending before any court, tribunal or other authority for contravention of section 63 so far as it relates to breach of clause [6] of section 2 of the principal Act, shall stand abated. It was also considered necessary to provide that the amendment shall not affect the validity of any such order passed by any court, tribunal or other authority prior to commencement of the amending Act, which has become final.

As the Gujarat Legislative Assembly was not in session, the Bombay Tenancy and Agricultural Lands [Gujarat Amendment] Amending Ordinance, 2000 was promulgated to amend the said amending Act to achieve the aforesaid object. This bill seeks to replace the said Ordinance by an Act of the State Legislature."

#. Ultimately, as per the amendment made on 16th March, 2001, all the proceedings relating to any order made or purported to be made under Section 84 [C] of the Bombay Tenancy and Agricultural Lands of 1984 for contravention of the provisions of Section 63, so far as it relates to the breach of Clause [6] of Section 2 of the Principal pending before any Court, tribunal or other authority or any such proceedings initiated by any such authority on or after commencement of the Amending Act, shall stand abated notwithstanding contained in Section 84[C] of the Principal Act. The amendment made by Section 2 shall not affect the validity of any such order referred to in Section 3 made by any Court, tribunal or any authority before the date of commencement of the Act which has become final. The word "final" has also been explained to the effect that for the purpose of this Section word "final" means no appeal, revision or any other proceeding is pending before any court, tribunal or other authority against any such order on the date of commencement of the amending Act.

#. In view of above said amendment, if facts of the present case reveal that the Mamlatdar, ALT, Daskroi has passed the order on 8th May, 1990. Thereafter, the Deputy Collector Land Reforms [Appeals], Ahmedabad has passed the order on 31st May, 1994 and thereafter, the Gujarat Revenue Tribunal has passed the order on 26th

February, 1999 and then the petitioner has filed present petition on 27th November, 1999 challenging these three orders referred to above. Therefore, looking to this amendment made on 16th March, 2001, view taken by this Court in Case of Meruben D/o Sorbji Pestanji Bhatporiya & w/o Late Peshi Morena & Anr. V. Additional Special Secretary, Revenue Department & Others reported 2002 [1] GLR 640. The observations made in para-8 of the aforesaid decision are reproduced as under :-

"8. In light of the submissions made by the learned advocates, in my opinion, when the Assistant Collector by is order remanded the matter back to the Mamlatdar with a direction to examine whether respondent No.4 is an agriculturist or not, and which order has been confirmed by the Collector as well as the Additional Special Secretary, the matter is pending before the Mamlatdar for deciding the question whether respondent No.4 is an agriculturist or not, and therefore, considering these facts, Sec.4 as well as Sec.5 read with Explanation is fully applicable to the facts of the present case. It is also necessary to note that in the amendment of Sec.2 of the Guj. Act No.4 of 1995, it is provided that "in the amending Act, in Sec. 2, for the words "shall be deleted" occurring at two places, the words "shall be and shall deemed always to have been deleted" shall be substituted". Therefore, the restrictions to hold the agricultural land by distance of more than 5 miles i.e. 8 kilometers or the entire area of land shall form one compact block and the residential requirement for personal supervision for cultivation of land, have been removed by the Bombay Tenancy & Agricultural Lands [Gujarat Amendment] Act, 1995. It is also necessary to note the subsequent fact, which has been mentioned by Mr.K.K.Trivedi, learned Advocate appearing on behalf of the respondent No.4 that pursuant to the remand order passed by the Assistant Collector, which has been confirmed by the Collector as well as by the Additional Special Secretary, the Mamlatdar has considered the question whether the respondent is an agriculturist or not and after considering the question, the Mamlatdar has passed an order on 31-1-2001 under Sec.2 [6] ready with Sec.70A of the Tenancy Act and came to be conclusion that respondent No.4 is an agriculturist. However,

this order is not challenged by either party before the higher authority, but the fact remains that the proceedings was pending before the Mamlatdar, Olpad, Surat at the time of the amendment notification dated 6-11-2000. Therefore, in my opinion, in light of the amending Act No.5 of 2000 dated 6-11-2000, the order passed by the Assistant Collector dated 10-6-1992, the order passed by the Collector dated 25-5-1994, and the order passed by the Additional Special Secretary dated 17-7-1999 are abated as per the amending Act 5 of 2000 dated 6-11-2000. Accordingly, the aforesaid orders at Annexures A, B and C to the petition, passed by the three authorities are abated and now, not having any legal effect of the said orders. Accordingly, the present petition is allowed. Rule is made absolute. No order as to costs."

#. In light of amendment and pendency of the proceedings, according to my opinion, the orders impugned passed by the Mamlatdar dated 8th May, 1990, order dated 31st May, 1994 passed by the Deputy Collector and the order passed by the Gujarat Revenue Tribunal dated 26th February, 1999 passed by authorities concerned now stand abated and it is ordered accordingly and there will be no legal effect of the aforesaid three orders.

Accordingly, present petition stands allowed.
Rule is made absolute with no order as to costs.

Date : 5-12-2002 [H.K.Rathod, J.]

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